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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/660,659  
Filing Date: September 12, 2003  
Appellant(s): HOCHTRITT ET AL.

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Andrew J. Patch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 02/13/2009 appealing from the Office action  
mailed 09/30/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2007-3501

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,100,020	Petterson et al.	3-1992
D310,923	Breger	10-1990
6,543,641	Hubanks et al.	4-2005
4,526,291	Margulies	7-1985
6,892,898	Boone et al.	5-2005

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler USPN 1,898,983 in view of Petterson et al. 5,100,020.

Wheeler discloses a wall mountable high capacity towel dispensing cabinet comprising first and second sections. The first section is straight with the second section extends at an angle. Wheeler does not disclose exact angles but testing different angles is common practice.

Wheeler does not disclose a stand which holds the two sections at oblique angles relative to a horizontal surface.

Petterson teaches using a stand supported by rubber feet to support a high capacity dispenser as claimed. The rubber feet holding the dispenser fixedly on a counter.

It would be obvious to one skilled in the art to mount the Wheeler to a stand as taught by Petterson because it allows for a high capacity dispenser to be used on a counter top, or other narrow flat surfaces.

Claim 1-13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breger USPN D310,923 in view of Petterson et al. 5,100,020.

Breger discloses a wall mountable high capacity towel dispensing cabinet comprising first and second sections. The first section is straight with the second section extends at an angle.

Breger does not disclose a stand which holds the two sections at oblique angles relative to a horizontal surface.

Petterson teaches using a stand supported by rubber feet to support a high capacity dispenser as claimed. The rubber feet holding the dispenser fixedly on a counter.

It would be obvious to one skilled in the art to mount the Breger to a stand as taught by Petterson because it allows for a high capacity dispenser to be used on a counter top, or other narrow flat surfaces.

Claim 1-13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hubanks et al. USPN 6,543,641 in view of Petterson et al. 5,100,020.

Hubanks discloses a wall mountable high capacity towel dispensing cabinet comprising first and second sections. The first section is straight with the second section extends at an angle.

Hubanks does not disclose a stand which holds the two sections at oblique angles relative to a horizontal surface.

Petterson teaches using a stand supported by rubber feet to support a high capacity dispenser as claimed. The rubber feet holding the dispenser fixedly on a counter.

It would be obvious to one skilled in the art to mount the Hubanks to a stand as taught by Petterson because it allows for a high capacity dispenser to be used on a counter top, or other narrow flat surfaces.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Any of the above combinations and further in view of Margulies USPN 4,526,291.

The combinations above fail to show flanges cooperating with the cover.

Margulies discloses flanges (46) cooperating with a cover (4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the flanges as taught by Margulies to that of the combinations above in order to provide a more coherent seal between the body and the cover.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Any of the combinations above and further in view of Boone et al. USPN 6,892,898.

Any of the combinations above fail to show a cover being either opaque or transparent.

Boone et al. does disclose a cover being either transparent (316) or opaque (read column 13 lines 52-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify any of the combinations above's cover to be either opaque or transparent as taught by Boone, in order for more easily viewing the interior of the dispenser and as a matter of design choice.

#### **(10) Response to Argument**

With regard to applicant's query as to why previously cited references were cited a second time on a second form 892, as this was the examiners first rejection in the case and for clarity the examiner included an 892 containing all the references relied upon in his rejections, this was not an attempt to present the art as new, as the applicants representative has argued, but an effort at simplifying prosecution for the examiner and representative by not requiring them to refer to the previous rejections for the citation of the prior art.

With regards to the arguments filed with respect to the rejections based on Wheeler in view of Petterson applicant has argued that the examiner has made a

hindsight reconstruction that didn't address why one skilled in the art would choose Petterson's stand as opposed to other stands in the prior art as Petterson does not disclose a distinct or separable stand. Applicant goes on to argue that the combination of Wheeler in view of Petterson would not form Oblique angles to the horizontal and that Wheeler is too top heavy to be mounted inclined on a stand. Additionally applicant argues that the combination of Wheeler in view of Petterson that the majority of the length is not straight. Examiner respectfully disagrees. Wheeler teaches a dispensing body with a integral stand forming two distinct parts of the dispenser. The stand of Wheeler holds the dispensing section generally at an oblique angle to the horizontal, this angled presentation reduces the pressure in the stack and aids in presentation by having the opening of the dispenser at an oblique angle to the horizontal. Though the disclosure of Petterson is silent to these advantages they are obvious to one skilled in the art. Wheelers cabinet which includes an upstream section of the dispenser including the three subsections comprised of two straight and a small curved section defining the majority of the length. The curved section is included as a means to relieve stack pressure at the dispensing opening. Wheeler describes a dispenser which reduces stack pressure at the dispensing opening while Petterson discloses a stand also designed to help reduce stack pressure, the other stand cited by applicants representative do nothing to reduce stack pressure. So if one skilled in the art was presented with the two styles of stands present in the prior art it would be advantageous to choose the stand as taught by Petterson because it provides the added benefit of further reducing the stack pressure. Though Wheeler is a very tall cabinet this does not

preclude being mounted at an angle but merely requires the angle to be steeper or the stand to be larger to maintain the center of gravity within the dimensions of the base. If the dispenser of Wheeler was mounted generally at an angle as taught by Petterson both the upstream section and the lower section would be at oblique angles to the horizontal. For at least these foregoing reasons the claim rejected based on Wheeler/Petterson stand rejected.

With regards to the arguments filed with respect to the rejections based off of Breger in view of Petterson applicant has restated the arguments addressed above. As such for the same reasons that the Wheeler/Petterson combination was maintained by examiner the claims rejected in view of Berger/Petterson stand rejected.

With regards to the arguments filed with respect to the rejections based off of Hubanks in view of Petterson applicant has restated the arguments addressed above. As such for the same reasons that the Wheeler/Petterson combination was maintained by examiner the claims rejected in view of Hubanks/Petterson stand rejected.

Applicant's arguments filed 02/13/2009 with respect to arguments related to the boards decision filed 06/26/2008 have been fully considered but they are not persuasive. Applicant argues that in the board decision the majority states that there is "no articulable reasoning having rational underpinnings in the teachings" to consider the combination as obvious. However, the combination being referred to in the previous appeal by the board is fundamentally different from the combinations that are the subject of this appeal. The current rejections use Petterson to modify towel dispensers, that do not specifically disclose a mounting arrangement or configuration, to show the

obvious teaching of mounting a dispenser to a stand to allow the dispenser to be mounted on a counter top or other narrow flat surface as taught by Petterson. There combinations were not under consideration in the previous appeal. The prior art rejection in the previous appeal was that of Petterson in view of Swift, Swift was used to modify the curved housing of Petterson with the housing of Swift. Swift taught a dispenser for a specific purpose and the teaching of mounting the dispenser on a wall which required a more fundamental change than the combinations presented in the currently appealed rejections.

With regard to applicant's assertion that prosecution could only be opened with written authority of the Director. The examiner makes note that this issue is a petitionable issue and not an appealable issue. Furthermore, during the interview dated 10/23/2008 the procedure of reopening prosecution after an appeal decision was discussed and applicant was offered the choice to receive a supplemental rejection with directors approval to obviate the issue, said supplemental was declined at that time by applicants representative. Applicant then filed an appeal which has effectively made the issue moot.

**(11) Related Proceeding(s) Appendix**

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Timothy R. Waggoner

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651

Conferees:

Gene Crawford /GC/

Patrick Mackey /PM/